Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT AINITAL.

First Appeal No.07 of 2003

State of Uttaranchal through Superintending Engineer, Maneri Bhali State-II, Joshiyara, Uttarkashi

..... Appellant

Versus

1. M/s Continental Construction Co. Ltd., Continental House 28 Nehru Place, Delhi through its Managing Director, Continental Company
2. District Judge, Uttarkashi
3. Sri S.P. Mathur, retired Engineer in Chief 15/12 Indra Nagar Lucknow (Arbitrator)
4. Sri N.K. Malhotra, Special Secretary presently law Secretary, Govt. of U.P. Lucknow (Arbitrator)

..... Respondents

Sri Bhupendra Singh, learned standing counsel for Appellant
Sri B.C. Pandey, Sr. Advocate, ld. counsel for respondents

Date: September 7, 2006

Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal,J

This appeal has been preferred by the appellant under Section 37 of the Arbitration Act, 1996 (***hereinafter will be referred to as the New Act***) against the judgment and decree dated 21.12.2002 passed in Civil Suit No.20 of 2002 by District Judge, Uttarkashi.

2. Brief facts of the case giving rise to the present appeal are that a contract was awarded to the respondents for different types of construction work in Maneri Bhali Project, Uttarkashi vide Agreement No. 01

S.E. 1980-81. The period of contract was up to the year 1986 which was extended at the request of the Contractor up to 31.12.1992. the dispute arose between the parties in the year 1994 relating to payment of respondent. Thereafter, the reference was made to the two Arbitrators nominated by both the parties through Engineer-in-Charge by invoking clause 1.3.01 of the contract. The arbitrators entered upon the reference on 1.2.1995 and the contractor raised in total 32 claims before the Arbitrators. Out of these 32 claims, 10 claims were allowed by the Arbitrators vide award dated 7.2.2002. The opening sentence of the award says that this is an award under the Indian Arbitration Act, 1940.

3. The appellants moved an application under Section 34 for the New Act of 1996 before the District Judge. A perusal of application moved under Section 34 of the new Act shows that the application has been moved on the grounds available to challenge under the old Act of 1940, broadly available under Sections 30 and 33 for the old Act of 1940. Under Section 14 of the old Act, the award was to be sent to get the same as a rule of court by the Civil Judge. The application has been moved clarifying the grounds which have been allowed by the District Judge saying that it was in continuity of the objection and it was not barred by limitation. The District Judge after examining as to whether the grounds raised in the application were grounds enumerated in the application under Section 34 of new Act or not, rejected the application on the ground that the applications did not contain the grounds as enumerated under Section 34 of the new Act of 1996.

4. We have perused the grounds of application which reveals tat the grounds enumerated under

Section 34 of the new Act for setting aside the award were not taken in the application or setting aside the award. Therefore, we confirm the order passed by learned District Judge and dismiss the appeal. No order as to costs.

(M.M. Ghildiyal, J.) **(P.C. Verma, J.)**

Rajeev Dang